

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3959 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DUDHALA SEVA SAHAKARI MANDALI LTD.

Versus

JOINT REGISTRAR & SPECIAL AUDITOR (DIVISION)

Appearance:

MR AK CLERK for Petitioner

MR. U.A. TRIVEDI, A.G.P. for Respondent No. 1

MR BM MANGUKIYA for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/07/97

ORAL JUDGEMENT

The petitioner Co-operative society challenges the order dated 19.5.1997 passed by the respondent No. 1 Joint Registrar and Special Auditor (Division) Co-operative Societies, Rajkot, altering the classification of the respondent No. 2 Co-operative Society from category 'C' to category 'B'.

It is alleged on behalf of the petitioner that the impugned order dated 19.5.1997 which purports to be an order in appeal would not have been made because no appeal lies against the order of the auditor who initially made the classification of the respondent No. 2 society. The initial classification by the auditor was made on 12.11.1996 as per which the respondent No. 2 society was classified in the 'C' category. That classification was challenged by the respondent No. 2 society by filing 'appeal application' No. 21 of 1997 before the Joint Registrar and Special Auditor. According to the learned counsel for the petitioner the Joint Registrar and Special Auditor could not even have revised the order of the Auditor under Section 155 because the power of the Registrar under Section 155 has not been delegated to the Joint Registrar and Special Auditor. It was further contended that the respondent No.1 Joint Registrar and Special Auditor had by the impugned order added 11 marks which has resulted in changing the classification of the respondent No. 2 society from 'C' category to 'B' category. Once it is classified in 'B' category it would be in a position to contest for election to the post of Director of Amreli District Central Co-operative Bank Limited, Amreli. It is submitted that the voters' list of that society was finalised on 15.5.1997. Earlier, provisional voters' list was published on 28.4.1997 and the election programme was published on 16.5.1997. It is only thereafter that the impugned order was passed on 19.5.1997 the result of which is that the respondent No. 2 society has become eligible to send its representative to contest for the post of Director of the said Federal Society. It was submitted that timings of this change clearly suggest that the impugned order was deliberately made to enable the respondent No. 2 to contest the election. It was further argued that the impugned orders for grounds mentioned in paragraphs 15 and 19 of the petition is bad for reasons of political malafides.

The election of the Director from this Dhari Constituency was over after filing of this petition and was declared on 5.6.1997 when, it is stated that, the representative of respondent No. 2 Society was declared elected unopposed as Director.

The learned counsel appearing for the respondent no. 2 society submitted that the respondent No. 1 was empowered to revise the order of the Auditor dated 12.11.1996 by which the respondent No. 2 was classified in 'C' category. Reliance was placed by him on the decision of this court in H.J. PATEL Vs. LANVA DUDH

UTPADAK CO-OP. SOCIETY LTD. & ORS. reported in 22 G.L.R. 787 in which it was laid down that Section 155 of the said Act empowers the State Government to revise the orders of a Joint Registrar.

Under section 84 of the said Act the Registrar is empowered to audit or cause to be audited by a person possessing the prescribed qualifications the accounts of every society and the person authorised would be an auditor for the purpose of the Act. It would therefore primarily be the duty of the Registrar to audit the society and if that is not possible he can get that work done through the person authorised by him by general or special order. Under Rule 38B, the Registrar keeping in view the efficiency of management etc. is empowered to prepare guidelines for determining the status of the society and under sub-section (2) the auditor has to, after completing the audit, determine and award the classification to the society in accordance with the guidelines prepared by the Registrar from time to time under sub-Rule (1) of Rule 38B. Admittedly, the guidelines are issued by the Registrar under this provisions as per which classification of the society is required to be done in one of the four categories namely, category A, B, C or D i.e. 'A' for very good, 'B' for average, 'C' for weak and 'D' for bad. The classification has to be done following the various heads for which marks are indicated in the guidelines. The marks under various heads are to be given for its financial position, economic viability, functions, outstanding dues, bad debts and its management and other factors. When the Registrar himself does not discharge the function under Section 84(1) he can get it done through any other officer including the Joint Registrar-cum-Special Auditor. There seems to be some distinction between the Joint Registrar and the Joint Registrar-cum-Special Auditor sought to be made out on behalf of the petitioner. Registrar has been defined under sub-Section 17 of Section 2 of the Act so as to mean a person appointed to be Registrar and includes to the extent of powers of the Registrar conferred on any other person under this Act, such person and further includes Additional or Joint Registrar.

When a Registrar gets the audit done through another person that person is required to follow the guidelines which are issued by him and the Registrar does not denude himself from any powers while causing audit to be done. If the auditor commits an apparent mistake in giving the marks as per the guidelines it is obvious that the Registrar can correct the same so as to bring it in

tune with the guidelines. The marking is to be done on the basis of the performance and other relevant factors and it will not be appropriate for this court to sit in appeal over classification of a society into a particular audit class. The respondent No. 1 Joint Registrar and Special Auditor is admittedly higher officer than the auditor who made the audit categorisation. The auditor was obviously under the control of the Joint Registrar and Special Auditor and even if appeal did not lie there was no question of the Registrar being denuded of his powers and therefore the auditor's audit and categorisation could have been corrected by the respondent No. 1. The petitioner could have challenged the order of the respondent No. 1 Joint Registrar and Special Auditor (Division) before the Registrar or the State Government. If it is the contention of the petitioner that the respondent No. 1 was not exercising any powers of the Registrar then he could have challenged his order before the Registrar and if it is the contention that the respondent No. 1 was exercising the delegated powers of the Registrar then the order could have been challenged before the State Government. That effective remedy has not been availed of by the petitioner.

As regards the allegations of malafides a bare reading of paras 15 and 19 and other averments made in the petition show that they are as vague as they can be and no political malafides can be inferred from such vague allegations. Under these circumstances, the impugned order, which was not even annexed with the petition when the petition was filed and has been submitted only today, cannot be interfered with by this court. The impugned order gives cogent reasons for giving marks and this court cannot sit in appeal over the reasoning adopted in the impugned order. The result of the impugned order classifying the respondent No. 2 society category 'B' cannot therefore go into by this court.

The petition is, therefore, rejected. Notice is discharged with no order as to costs. Ad-interim relief is vacated. At this stage, the learned counsel for the petitioner submits that the ad-interim relief should be continued. The result of the election is declared and there is no point in continuing the interim relief. The request is therefore rejected.

(R.K. ABICHANDANI, J)

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